five times greater. Under price cap regulation, LECs have no means of recovering most of the costs of this traffic. Increased use of Internet access will increase the size of the subsidy that the ESP exemption has already created.

Under the Joint Board's recommendation, Internet access providers would continue to obtain discounted network services from LECs via the ESP exemption and, in addition, now would have their overall service package (which includes the LECs' discounted services) discounted again through the universal service fund to which the Internet access providers would not contribute, but the LECs would. These layers of subsidized discounts would increase incentives to use the network for Internet access. This approach, however, would provide subsidy compensation to one group of users of the network, ISPs, rather than to the telecommunications service providers, who must increase their network investment in order to increase the capacity of the network to meet the increased demand and avoid problems of network congestion for all customers. This placement of the interests of one group of customers above others would be economically unsound and contrary to the public interest in obtaining the best possible network. Not only would this approach be in conflict with Section 254, but it would be contrary to Sections 201 and 202, which prohibit unreasonable charges and discrimination, and would be an unauthorized and uncompensated taking of LEC property in violation of the Act and of the Fifth and Fourteenth Amendments to the U.S. Constitution.

If the Commission decides to encourage the use of Internet access by schools and libraries in this proceeding, it should do so consistent with Section 254 principles by making explicit the implicit subsidy currently created by the ESP exemption. The telecommunications carriers that provide network services to Internet access providers would continue to discount those services for ESP use with schools and libraries, but would recover from, or offset payments to, the fund in order to recover those discounts.

This same principle of changing inefficient and unfair implicit subsidies into more efficient and fair explicit subsidies could be applied to access services used by all enhanced service providers for all types of enhanced services, if the Commission chooses to continue to subsidize that industry's use of the network. The Commission should coordinate these issues with its pending access reform proceeding so that the Commission can resolve the public interest issues associated with the ESP exemption as a whole.

B. Internal Connections Should Not Be Included Among the Services Required for Schools and Libraries

The Joint Board erroneously concludes that "internal connections" should be included in the list of services eligible for universal service support. The definition includes not only inside wire, but also goods traditionally characterized as CPE such as "routers, hubs, network file servers, and wireless LANs." ¶ 477. The Commission has no jurisdiction to order either inside wire or CPE to be included in the definition of universal service, as it has detariffed and hence deregulated both.[61]

Moreover, the Joint Board includes inside wire and CPE it characterizes as "internal connections" in the definition of universal service and allows their providers to *collect* from the fund (¶ 484), but cannot require all such providers to *contribute* to the fund because some providers are not telecommunications carriers. *See* ¶¶ 155 & 814. In this way, providers such as independent inside wire providers and CPE manufacturers -- who may collect from the fund but need not contribute to

[61] *Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Cos.*, 85 FCC 2d 818 (1981), *recon.*, 89 FCC 2d 1094 (1982), *further recon.*, 92 FCC 2d 864 (1983); *Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190 (1986); *NARUC v. FCC*, 880 F.2d 422 (D.C. Cir. 1989); *Procedures for Implementing the Detariffing of CPE and Enhanced Services (Second Computer Inquiry)*, 104 FCC 2d 509 (1986); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384, 438-447 (1980).

it -- will be subsidized by telecommunications carriers. There is no plausible basis for creating this new subsidy, as it is neither "equitable" nor "competitively neutral." *See* ¶ 476.

When the Commission deregulated inside wire and CPE, it opened up the market for these goods by allowing providers other than telecommunications carriers to furnish them to end users. In so doing, the Commission relinquished jurisdiction to regulate such providers. Now, the Joint Board proposes without basis to have the Commission reassert jurisdiction over aspects of the inside wire and CPE markets.

The Joint Board cites two reasons for including internal connections in the definition of universal service for schools and libraries. The Joint Board first asserts that internal connections are a service rather than a good, and that because the Commission has jurisdiction over services, it may order the provision of internal connections. ¶ 474. The Joint Board asserts: "We find . . . that the *installation and maintenance* of such facilities are services." *Id.* (emphasis in original).

However, in the next breath, the Board concedes that it proposes to include far more than the *installation and maintenance* of internal connections; it also orders that the "facilities" necessary to create the connections -- the wiring and CPE -- be furnished. ¶ 474 ("In fact, the cost of the *actual facilities* may be relatively small compared to the cost of labor involved in providing internal connections."). However, "facilities" -- *i.e.,* goods -- are not eligible for universal service support. 47 U.S.C. § 254(h)(1)(B) (telecommunications carriers shall, upon . . . request for any of its *services* . . . provide such *services* to . . . schools . . . and libraries . . . ." Emphasis added). And

contrary to the Board's assertion (¶ 474), these goods -- especially routers, hubs, network file servers and wireless LANs (¶ 477) -- are very costly and will rapidly diminish the $2.25 billion annual fund.[62]

Second, the Joint Board finds statutory authority for the inclusion of internal connections in Section 254's various vague references to "access" and "classrooms," *e.g.*, ¶¶ 466 & 476, and a few stray references in the legislative history. *Id.*, ¶¶ 466 & 473. None of these references ever specifically refers to inside wiring, much less CPE such as routers, hubs and servers. *See* ¶ 479.[63] Moreover, to the extent the Joint Board relies on Section 254(h)(2)(A), the advanced telecommunications services provision, it has completely ignored that Section's requirement that measures be "competitively neutral." *See* ¶ 476 ("[t]he Commission shall establish competitively neutral rules . . . to *enhance* . . . access to advanced telecommunications and information services. . . ."). And finally, as we point out above with regard to the Internet, internal connections cannot receive support under Section 254 because support is limited to "telecommunications services" (Section 254(c)(1)), and "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 254(e).

Rather than ensuring competitive neutrality, the Board has established a system in which telecommunications carriers which must pay into the fund subsidize non-telecommunications

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[62] For example, a task force commissioned by the California State Schools Superintendent in 1996 estimated the total cost of internal connections for California classrooms to be over *$575 million*, while Pacific has estimated the materials cost *of the wire itself* to be less than *$10 million.*

[63] Indeed, the Joint Board's citation to Senator Rockefeller's statement during the floor debate to support *including* inside wire and CPE actually supports *excluding* these items. Senator Rockefeller made no distinction between routers, hubs and servers and *personal computers*, which the Joint Board concedes -- as it must -- are not included among the services eligible for universal service support. 141 Cong. Rec. S7978, S7981 (daily ed. June 8, 1995) ("A 1995 study . . . discovered . . that only 3 percent of classrooms . . . were connected to [the] . . . Internet . . . . Why? One reason has to be the lack of funds to even buy *the equipment.*") (Emphasis added.)

carriers whose inside wiring and CPE will be provided to schools and libraries. *Compare* ¶¶ 477 & 484 (those eligible to draw from fund include "any provider of internal connections that the school or library selects") *with* ¶¶ 155 & 814 (those required to contribute to fund include only "telecommunications carriers that provide[] interstate telecommunications services. . . ."). The Joint Board's recommendation to include internal connections thus violates Section 254.

C. The Joint Board's Recommendation Must Be Reconciled With State Commissions' CPUC's Universal Service Program For Schools, Libraries and Other Organizations

We believe the Commission should provide some guidance as to how to reconcile federal and state universal service programs. In California, for example, the CPUC has already prescribed specific programs for schools, libraries, certain community-based organizations, and health care providers. However, the Joint Board proposes to base its education and library universal service programs on contributions from both interstate and intrastate revenues, blurring the distinction between state and federal programs. ¶ 817.

The CPUC's program includes different services from the Joint Board's program,[64] proposes different discounts,[65] and provides different levels of recovery from the fund.[66] Clearly, duplicate contributions, recovery and discounts are not appropriate. However, given the dual jurisdictional basis -- at least for contributions -- of the Joint Board's proposed fund, we ask the Commission to give guidance as to how federal and state programs will mesh.

We propose that federal discounts be applied first, with state discounts overlaid thereafter, and that service provider contributions to a state fund be deducted from the amount of contribution such carrier would otherwise contribute to the federal universal service fund. In this way, federal and state funds will complement one another without allowing double dipping.

D. The Proposed Discount Methodology Requires Clarification

1. The Commission Should Clarify the Rules For Determining the "Lowest Corresponding Price"

The cornerstone of the Joint Board's schools and libraries proposal is its requirement that providers offer schools and libraries their "lowest corresponding price" ("LCP"), and that the discount be subtracted from this offered price. We generally support this recommendation. It is unclear from the Joint Board recommendation, however, whether the offered pre-discount price should

[64] The CPUC plan includes single business lines, Centrex, ISDN, T-1s, DS-3, but only recurring costs (no usage, features or non-recurring charges), with a $50 million annual cap; the Joint Board proposal includes all telecommunications services, including installation charges, usage and features, as well as Internet subscription fees, e-mail, and "internal connections," subject to a $2.25 billion annual cap.

[65] The CPUC plan gives 50% discounts to schools and libraries, and lower discounts to other organizations; the Joint Board proposes a 20-90% discount structure with the greatest discounts provided based on economic need and high cost locations.

[66] The CPUC rules allow for the subsidy to be based on either the difference between the discount rate and the tariffed business rate, or a negotiated rate which is below the tariffed rate; the Joint Board recommendation allows recovery of the difference between the discounted price and the "lowest corresponding price."

change if a provider *subsequently* offers a different price to similarly situated non-residential customers for similar services. We propose that it should not. While the offering of a different price would change the LCP applicable to *future* contract offerings, the pre-discount price offered and agreed to in an *existing* contract should, in all cases, remain in effect for the duration of that contract. This will avoid administratively burdensome price revisions in the middle of a contract term. Our proposal unduly benefits neither side, because there is no way to know whether other prices will go up or down during the school's or library's contract term.

In addition, the Board's discussion of "geographic area" is very unclear. ¶¶ 542 *et seq.* We interpret the recommendation to mean that a carrier serving a particular franchise area must offer discounts in that entire area, *not* that the LCP should necessarily be the same in the entire area. Stated otherwise, there should be no requirement that a provider offer the same LCP to all schools and libraries in its service area. Rather, the Board's "similar services" and "similarly situated non-residential customers" requirements allow for geographic price differences, because customers and services in different areas may not be "similar." Requiring a provider to offer the same LCP in its entire service area -- regardless of cost differences -- would be irrational and perhaps even confiscatory.[67] The provider need only offer the same LCP to schools and libraries that are similarly situated and have requested similar services, regardless of where in the service area they are located.

The Commission should also clarify that a school or library need not purchase services from the provider which offers the lowest LCP, where its local procurement guidelines allow it to select service providers based on "value" such as service, reliability and quality, and not purely on price. If schools and libraries are allowed to reject the low bidder, the discount they receive should be

[67] Because the LCP sets the rate of reimbursement, if the LCP is below cost, the level of reimbursement will not allow the provider to recover its costs. In this situation, the LCP would be confiscatory.

tied to the low bidder's price. For example, if one provider bids $100 and another bids $110, a school or library eligible for a 50% discount should obtain a $50 discount even if it opts to purchase the $110 service. In this way, the fund will be protected from "gold plating."

Moreover, there should be some mechanism for setting the pre-discount price where there is no LCP. While the Joint Board proposes to require an LCP even in areas where there is no competition, it may well be that no provider has "similarly situated non-residential customers" or "similar services" in that area. ¶ 541. Where there is no LCP, the pre-discount price should be based on the lowest tariff price in the county in which the school or library is located, unless a cost-based agreement would produce a lower price, in which case the latter would be the LCP. The Commission should also clarify that carriers need not file tariffs for each price they offer schools and libraries. Rather, they should rely on their existing tariffs, where available, to determine the LCP and set prices for schools and libraries in different areas.

In addition, the Joint Board requires that providers certify that they are truly offering their "lowest corresponding price." ¶¶ 540-41. Given the number and complexity of the services the Joint Board recommends be eligible for universal service funding, honest mistakes may occur. Where the provider does not intentionally make an erroneous self-certification, the sole remedy for the error should be that the school or library prospectively take service from the provider at the correct LCP.

Finally, the fact that a provider does not give a school or library its "lowest" price should not necessarily mean the self-certification was not accurate. The Joint Board acknowledges that the LCP need not be the provider's "lowest" price. ¶ 540 ("We would hope that providers would charge schools and libraries less than the lowest corresponding price, *ideally the lowest price charged to any of their non-residential customers*"; emphasis added). Thus, providers' certifications should not be called into question simply because the LCP does not reflect the lowest price charged any customer.

2. We Generally Support the Joint Board's Discounts, But Suggest Minor Changes

We generally support the Joint Board's proposed discounts (*see* Discount Matrix, ¶ 555), but make a few suggestions that we believe will help determine the level of discount fairly.

We agree that schools and libraries in high cost areas and those suffering economic disadvantage should receive the greatest discount. To determine which schools and libraries are located in high cost areas, we recommend that all participating schools submit to the fund administrator, via their respective state departments of education, a written statement of the retail price of a T-1 circuit from the school or library to the point of presence of the nearest information service provider. The collective data can then be sorted by the fund administrator to determine the "break points" required to meet the allocation percentages in the Joint Board's Matrix (¶ 555: 67% low cost; 26% mid-cost; 7% highest cost).

As for economic disadvantage, we have no objection to reliance on number of children eligible for the school lunch program in schools that use the program. ¶ 565. We suggest a different approach for non-public schools and libraries, however. Non-public schools differ from public schools in at least two significant ways: 1) their operating budgets usually are derived from a combination of student fees or tuition and other non-governmental sources, and 2) they exist at their own discretion, without an obligation to serve specific populations, or to serve at all. We therefore suggest that non-public schools be collectively assigned the lowest level of discount -- 20% or 25% -- dependent solely upon the cost-of-service category dictated by the geography in which they are located.

In California at least, the economic well-being of libraries is ranked according to total *per capita* funding received in relation to their serving area. If similar data is available for all libraries, this data could be used as the mechanism for applying the Joint Board's Discount Matrix (¶ 555) to libraries. If such data is not universally available, and the American Library Association, the

Association of School Libraries, or other representatives of the library community do not have other, viable suggestions, libraries might be ranked according to the weighted average national school lunch program participation of their primary serving area. In the alternative, libraries could simply be given the same classification as the nearest public school. *See* ¶ 568 (seeking input on how to determine economically disadvantaged libraries).

3. Existing Special Rates Should Be Preserved in Appropriate Cases

Although we concur with the requirement that schools and libraries "seek competitive bids for all services eligible for section 254(h) discounts" (¶ 539), where schools and libraries have already procured services via a competitive bidding process, they should not have to undergo the cost and potential disruption of another bidding process until their existing agreement term has expired. This proposal is somewhat different from the Joint Board's intimation (¶ 572) that schools and libraries that can secure a materially different LCP through the universal service process than they already have are obligated to pursue the LCP. If no existing term is in effect, but the service provider was selected via a competitive bidding process, the school or library should be allowed to defer a new bidding process at its own discretion.

E. Schools and Libraries Or the Fund Administrator Should Be Responsible for Recordkeeping in the Event Of Participation in Consortia

We have no objection to the Joint Board's recommendation that schools and libraries be allowed to participate in consortia that consist of both eligible and ineligible users, with provisions to ensure the latter do not receive discounts funded through the federal fund. ¶ 596. However, we do not believe *providers* should be required to keep records documenting the level of eligible and ineligible usage. *Id.* (suggesting that Commission "require[] providers to keep and retain careful records of how they have allocated the costs of shared facilities . . . ."). This recordkeeping responsibility should lie

with those who benefit from participating in consortia, or on the fund administrator. Likewise, the requirement that the records "be available for public inspection" (*id.*) could unnecessarily burden providers with the responsibility to open something akin to a public reading room.

Placing responsibility for this recordkeeping with the schools and libraries themselves is most consistent with the Joint Board's "self-certification" mechanism. *E.g.*, ¶ 603 (self-certification requirements for schools or libraries submitting requests for services). If the Commission is concerned about improper use of services, audits of and reporting by schools and libraries should be the mechanism for discovering compliance problems. *See* ¶ 605 (prescribing audits and reporting). In no event should providers be responsible for misallocation of services between eligible and ineligible end users participating in consortia.

F. The Joint Board Neglected A Key Issue -- Equity in Fund Distribution

We found no explanation in the Joint Board recommendation of how the $2.25 billion annual fund will be allocated among schools and libraries. It appears that the Joint Board intended that any school able to afford the services it wants after application of the LCP and the discounts should be able to buy them. There should be more order to the process than this.

A first come, first served process will most likely benefit the richest and most technologically experienced schools and libraries, contrary to the intent of the Act to deliver services to high cost and disadvantaged users. Moreover, the poorest and least technologically experienced institutions may not be ready to participate in the first year. Thus, we propose that the Commission use a first come, first served approach in year one, but give top priority to poorer schools beginning in year two.

IX. THE JOINT BOARD'S PROPOSALS REGARDING HEALTH CARE NEED A GREAT DEAL OF MODIFICATION

A. Services Eligible For Universal Service Funding Must Be Commercially Available and Necessary to Congress' Stated Goals

To qualify for universal service funding, a service must be commercially available. Thus, carriers are not obligated to build out infrastructure for services which do not exist, or begin offering services to *rural* health care providers that are not commercially available to *urban* health care providers. *See* 47 U.S.C. § 254(c)(1)(C) ("The . . . Commission in establishing the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services . . . *are being deployed in public telecommunications networks by telecommunications carriers*." Emphasis added).

The services required must also be "*necessary* for the provision of health care services in a State, including instruction relating to such services, to [rural health care providers]." 47 U.S.C. § 254(h)(1)(A) (emphasis added). Thus, services which are not necessary for such services -- *e.g.*, patient bedside telephones for personal use -- should not be included among the services eligible for universal service support. We agree that communications among health care providers, as well as between providers and patients, relate to the provision of health care services and should be included.[68]

There is no evidence that full T-1 speeds for telemedicine are "necessary" services in the health care context. *See* ¶ 652 (supporting capacity up to and including 1.544 Mbps or its equivalent). Indeed, as we said in our comments to the Joint Board, ISDN service is adequate in the telemedicine context. *See* ¶¶ 640 n.2102 & 653.

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[68] We also agree, however, that the universal service fund should support only *originating* services, or terminating services billed to the health care provider, such as cellular calls. ¶ 655.

For example, a community hospital in an area of Northern California that is without neurosurgical care works with a network of neurosurgeons in the San Francisco Bay Area to receive neurological consultations over ISDN lines. Should a patient be brought to the community hospital with a neurological emergency, the hospital may transmit CT scans digitally over ISDN lines to the neurosurgeons or his staff to determine if the patient can be treated locally or needs to be transported to another hospital. The network works with 10 Macintosh computers. CT images or MRIs are transferred across digital ISDN lines in *four minutes.* Indeed, in California, there are many flourishing telemedicine project using ISDN lines, and no telemedicine projects to our knowledge that are using full T-1 speeds.

Thus, the Commission should not automatically assume that "more is better." We agree that the uses of telecommunications in delivering health care are expanding, but there is also a risk that precious resources will be ill spent on technology and bandwidth that is more robust and expensive than is necessary. We therefore ask the Commission to prevent "gold plating" by limiting the range of services available for universal service support to those truly necessary to health care.

Even if high speeds might be of use in a rural context, there is also a need to balance the advantage gained by such services against the cost of installing T-1 lines to every rural area in the country. Such installation will quickly deplete the fund, and may deprive those who seek funds later in the process from *any* access to telemedicine because of earlier gold plating. The cost of a T-1 in Pacific Bell's territory in California ranges between $800 and $2,500 for installation, and is then subject to a $125 monthly fee plus $25 per mile. Multiplied thousands of times, this amount would be staggering. In such situations, it will be less expensive -- and probably more useful -- to airlift patients to urban areas for needed care than to rely on diagnostics delivered over telephone lines.

Clearly, CPE such as televideo equipment and personal computers is excluded from eligibility for universal service funding. ¶ 656. However, without this equipment, expensive, high-speed telephone lines are useless to health care providers. Thus, despite the Joint Board's recommendation to the contrary (¶ 729), we advocate that health care providers be required, as part of their "bona fide" request, to certify that they have supporting technology available to them.

B. Pricing of Rural Health Care Services Should Not Equalize Distance Charges

The Joint Board recommends a complex mechanism for setting the rate a rural health care provider pays and that a telecommunications provider may treat as its universal service obligation. However, we must point out that in many areas of the country, rural and urban rates are the same because of prohibitions on geographic rate deaveraging. Where this is the case, and rural health care providers already pay the same rate as do urban providers, there should be no universal service obligations associated with such providers. We ask that the Commission make this point clear.

In this regard, there is an important distinction between the *prices* rural health care providers pay -- that is, the bottom line figure on their bills -- and the *rates* they are charged for an increment of service. In our view, if an urban provider pays a *rate* of $10 per mile for a distance sensitive service, the statute's only requirement is that a rural provider pay the same $10 per mile *rate.* It may be that the price the rural provider pays is higher because it is more distant from the central office than is the urban provider, but so long as these *rates* are equalized, the carriers have satisfied the Act's requirements.

The Joint Board appears to construe the term "rates" more broadly. ¶ 672 ("Where [distance-based charges and charges for crossing LATA boundaries] are in excess of those charges incurred by commercial customers in the nearest urban area, the statute suggests strongly that such charges should be made comparable"). To the extent this statement may be interpreted to require that a

rural provider that is 100 miles from the nearest central office pay the same distance-sensitive net amount as an urban provider that is two miles from the central office, the Joint Board has gone too far.

With regard to the Joint Board's proposed rate calculations, we generally support them, but believe they require some clarification. For example, in establishing the rate a rural health care provider will pay for service, the Joint Board recommends that comparison to "the highest tariffed or publicly available rate actually being charged to commercial customers within the jurisdictional boundary of the nearest large city in the state. . . ." ¶¶ 667 & 671. We presume this means that if a rural carrier does not serve that city, it will compare its rate to that of the carrier that does serve the city. If, as will be the case more and more, there is no tariffed or publicly available rate in that city, it may be burdensome for the rural carrier to establish the comparable urban rate. We suggest that in this situation, the rural carrier compare its rates to those in the closest city *with tariffed or publicly available rates* for similar services.[69]

C. The Commission May Not Require Toll Free Internet Access Service

We do not believe the Commission should order telecommunications carriers to provide toll free Internet access. *See* ¶ 669 ("We are not prepared to recommend supporting [toll free Internet access for rural health care providers] at this time."). Section 254 applies only to eligible telecommunications carriers, 47 U.S.C. § 254(e), and Internet access is not a telecommunications service. See Section XIII (A)(1), supra. To the extent the Commission would have telecommunications carriers waive toll charges for a health care provider to reach the nearest Internet Service Provider's server, there is nothing in the statute that supports this provision. All Section 254 requires with regard to health care providers is that they pay rates that are no higher than the rates a

[69] As with rates for schools and libraries, the Commission should clarify that carriers need not tariff each rural rate it offers a health care provider pursuant to Section 254.

carrier charges urban providers. With geographic rate averaging, this condition exists in many if not most parts of the country -- urban customers pay the same rates for toll as rural customers. The fact that greater distances cause greater prices does not mean the there is a *rate* differential between urban and rural customers.

Moreover, if the Commission requires telecommunications carriers -- who do not (at least yet) provide the majority of Internet access -- to subsidize long distance calling to ISPs, ISPs will not be incented to put servers in rural communities. Obviously, placing servers near rural health care providers will eliminate the need for any toll calling to gain access to the Internet, but this will never occur if the Commission creates disincentives for ISPs to do so.

D. There Is No Basis For Requiring Carriers to Build Out Facilities Where None Exist

We strenuously object to the Joint Board's recommendation to the extent it assumes that Section 254 requires carriers to *build out* their facilities to serve customers not currently served. *See* ¶¶ 682-83. This interpretation is inconsistent with the statute, would swell the fund to insupportable levels, is unnecessary given current industry initiatives and build out schedules, and would create incentives for carriers to finance infrastructure expansion from the universal service fund.

Nothing in Section 254 requires construction of infrastructure in order to bring services to rural health care providers. The Joint Board appears to rely on Section 254(h)(2)(B) ("The Commission shall establish competitively neutral rules . . . to define the circumstances under which a telecommunications carrier *may be required to connect its network* to . . . public institutional telecommunications users."). (Emphasis added.) However, Section 254(h)(2)(A) makes clear that any requirement that a carrier "connect its network to . . . public institutional telecommunications users" must be "technically feasible *and economically reasonable.*" (Emphasis added.) It is not economically reasonable to require carriers to build out entire new networks -- at high speeds -- to rural areas in order

to bring telemedicine to rural hospitals.[70] Nor is such a requirement "competitively neutral" (47 U.S.C. § 254(h)(2)), as it is probable that the burden of such construction would fall disproportionately on ILECs and carriers of last resort.

Moreover, Section 254(c)(1) requires the Commission to consider the extent to which services "are being deployed in public telecommunications networks by telecommunications carriers" in determining their eligibility for universal service support. By definition, services which require build outs are not already "being deployed." Because the health care provision of the statute does not state that Section 254(c) is irrelevant, Section 254(h) must be read in conjunction with the limitations in Section 254(c) so as to limit the range of services that will be funded by scarce universal service resources.

In addition to being exorbitant, requiring carriers to build out their networks by regulatory fiat may be unnecessary. Carriers already have aggressive build out plans, and are also engaged in private initiatives to bring telemedicine and other services to urban and rural health care providers, as well as other customers. There are currently over 130 telemedicine projects listed on the Telemedicine Information Exchange Web Page, which covers the entire nation. The American Telemedicine Association lists 8 telemedicine projects in California, which is tied with Pennsylvania and North Carolina with the greatest number of projects in the country.

Finally, it is bad public policy to subsidize large network upgrade projects with universal service dollars. Those carriers that have already built out their networks will be penalized by

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[70] *See, In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-237, FCC 96-456, ¶ 20 (rel. Nov. 22, 1996) ("In determining what is economically unreasonable, we tentatively conclude that no incumbent LEC should be required to develop, purchase, or install network infrastructure, technology, facilities or functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired and does not intend to build or acquire such elements.").

having to subsidize those that have not and seek to do so with universal service funding. In some cases, carriers will be funding build outs of their own competitors. Moreover, infrastructure build outs inevitably will be used for applications other than health care. However, once universal service fund dollars are spent on such upgrades, it will be difficult to reclaim them when carriers begin using new infrastructure for other uses.

Thus, the Commission should not require carriers to build out their networks to accommodate health care providers.

X. WE AGREE WITH THE JOINT BOARD'S PROPOSALS REGARDING THE FUND ADMINISTRATOR

We have no objection to the Joint Board's proposal to appoint a universal service advisory board to designate a neutral, third-party administrator (¶ 829); to retain NECA as temporary administrator of support mechanisms for schools, libraries and health care providers and the existing high cost and low income support mechanisms (¶ 833); and to allow NECA to be eligible to serve as permanent administrator of any aspect of the universal service fund by adding non-ILEC membership to its Board. *Id.*

XI. CONCLUSION

Much remains to be done before the federal universal service program becomes a reality. The Commission must, we believe, adopt a proxy cost model that uses actual costs, allow us to recover our legacy costs, set the national benchmark at a level that is low enough that carriers may recover their actual costs of serving customers in high cost areas, and allow carriers adequate recovery of their universal service contributions. The Commission should not lower the SLC cap, prohibit carriers from disconnecting service for non-payment of toll charges, include Internet access and inside wire for schools and libraries, or require infrastructure build-outs for health care uses.

We are prepared to do all we can to advance the cause of universal service, as long as the plan is consistent with the statute and good public policy. We are not prepared, however, to finance universal service without appropriate compensation. We hope the Commission will keep our concerns in mind as it works to reform universal service for the 21st century.

Respectfully submitted,

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EXHIBIT A

Exhibit A

PACIFIC TELESIS Group

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OCTOBER 15, 1996

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Community Organizations Announce Support for Pacific Telesis -- SBC Merger

Company Pledges to Take Leading Role in Universal Service, Create $50 Million Community Technology Fund When Merger is Complete

SAN FRANCISCO -- Pacific Telesis today joined with more than 100 community organizations in an agreement that creates a 10-year partnership designed to ensure that more of California's neediest residents have access to telecommunications services after the company's proposed merger with SBC Communications is completed.

The partnership agreement outlines a sweeping program to improve the availability of services to ethnic, disabled and low-income customers and to increase levels of charitable giving.

The centerpiece of the partnership is Pacific Telesis' decision to commit to a good faith effort to achieve 98 percent telephone penetration for minority

and low-income communities. Another element of the partnership is a new $50 million "Community Technology Fund," to be established by Pacific Telesis and governed by a broad-based committee of community and public interest group leaders and technology experts.

Among the community organizations participating in the partnership and supporting the proposed merger are the Greenlining Institute, Public Advocates, the Universal Service Alliance, the World Institute on Disabilities, the Asian Pacific American Community Partnership, the Hispanic Association on Corporate Responsibility, the African Americans for Telecommunications Equity, the Asians Americans and Pacific Islanders California Action Network, the Los Angeles Urban League, Latino Issues Forum and the Asian, Black and Latin Business Association.

"Pacific Telesis is proud of its history of reaching out to all segments of California society to ensure that they have access to high quality telecommunications services at affordable prices," said Phil Quigley, chairman and chief executive officer of Pacific Telesis. "This new fund will reinforce our commitment to serve those Californians who often do not enjoy full access to the range of communications services that are available to most of us."

Quigley explained that over the last several years, the Telesis Consumer Advisory Panel and community leaders have proposed the

establishment of a fund which reinforces commitments to universal service, broadening the existing access base for telephone services to give communities at risk of being underserved access to advanced telecommunications services.

The essential purpose of the Community Technology Fund is "community building," Quigley said, which is focused on the development and deployment of community-based applications of advanced technologies that address the living needs of at-risk and underserved communities. These applications cut across education, health care, economic and small business development, job training, labor market operations, employment and the full range of community services affecting the quality of life and community participation.

"In short, the fund is to facilitate the involvement of a broader spectrum of the society in shaping the applications of the advanced telecommunications system that is evolving," Quigley explained. "These are the emerging markets of California, and we believe it makes good business sense to serve them."

"We fully support this partnership and look forward to the day when SBC can bring this and many other benefits of the merger to Californians," said Ed Whitacre, chairman and chief executive officer of SBC Communications Inc. "Such a comprehensive commitment to the community is in keeping with the

values embraced by each SBC employee and demonstrated by the millions of hours of volunteer work they devote to their communities every year."

Leaders of several community organizations which are supporting the proposed merger said the partnership will benefit the underserved communities of California.

John Gamboa, executive director of the Greenlining Institute, said: "Telesis' commitment to set a 98 percent universal service goal for minorities is the heart and soul of this agreement. Minority economic development in California is dependent on linking all Californians together."

"California's low-income, minority, limited-English-speaking and disability communities are California's future wage and tax base, with over half of California's population and a wealth of culture and ideas," said Mark Savage, attorney for Public Advocates. "This agreement represents a visionary step in allowing these communities to compete and contribute equally to California and the Information Age."

Willis White, chairman of the California Black Chamber of Commerce, said: "Minorities don't want trivial 20-cent refunds; we want an empowerment and economic development fund, such as the $50 million education and technology fund proposed by Pacific Bell and community groups."

Gelly Borromeo, editor of Asian Enterprise, said: "The involvement of CEOs Ed Whitacre and Phil Quigley demonstrates the commitment of their companies over the 10-year period of this historic partnership. They're taking a leadership role in stimulating economic development."

"This agreement is an historic piece of public policy," said Jacquelyn Brand, chair of the Universal Service Alliance (USA) and founder and former executive director of the Alliance for Technology Access." But we all know that one company in a competitive environment cannot go it alone", she said, adding: "It is most encouraging to USA that this pioneering partnership agreement opens the door to a larger partnership of competitors to participate in the community-building that is the essential purpose of the Fund."

"The Asian Pacific American Community is proud to be a full partner in this unprecedented effort to ensure that all Californians benefit from telecommunications technology," said Anni Chung, chair of the Asian Pacific American Community Partnership and executive director of Self-
Help for the Elderly. "Pacific Telesis has been a longtime supporter of local communities, and their commitment will be strengthened by the merger with SBC Communications and the formation of a telecommunications fund. A stronger company means greater resources and support for communities that are underserved, underrepresented and in greatest need."